



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 24, 2023

Via ECF

The Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square, Courtroom 518
New York, New York 10007

Re: *United States v. Sayfullo Habibullaevic Saipov*, S1 17 Cr. 722 (VSB)

Dear Judge Broderick:

The Government respectfully writes to address three outstanding issues following the charge conference yesterday.

Judicial Notice. The Government proposes two modifications to account for the Court's taking judicial notice that ISIS is a designated foreign terrorist organization. First, on page 43 of the draft charge dated January 23, 2023, the Government proposes that the Court replace the bolded text of "**The parties have stipulated, or agreed**, that ISIS was designated . . ." with "The Court has taken judicial notice." Second, consistent with Federal Rule of Evidence 201(f), the Government proposes inserting the following instruction on page 15, following the subsection on Stipulations: "*Judicial Notice.* I have taken judicial notice that ISIS, including certain aliases, is a designated Foreign Terrorist Organization, and has been since October 15, 2004. (GX 1303.) I have accepted these facts to be true, even though no evidence has been introduced proving them to be true. You may, but are not required to, agree that these facts are true." The defendant does not object to these requests.

Willfulness Instruction. On page 49 of the draft charge, in light of the defendant's objection, the Government proposes replacing "wrongfulness" with "unlawfulness" in the following sentence: "It is sufficient that the defendant had an awareness of the general **wrongfulness** of his conduct."

Interpreters. The Court inquired whether the interpreters who interpreted for foreign-language witnesses at trial could return to the courthouse to be administered the oath or affirmation contemplated by Federal Rule of Evidence 604. Because at least two of the interpreters do not reside in the New York City area, the Government respectfully proposes that the interpreters provide sworn declarations. The defendant does not object to this approach. The Government was able to contact four of the five interpreters last night, and their declarations are attached. The Government will provide a declaration from the final interpreter (French, for witness Didiyr Timothy Buytaert) as soon as possible.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/
Andrew Dember
Amanda Houle
Alexander Li
Jason A. Richman
Assistant United States Attorneys
(212) 637-2563 / 2194 / 2265 / 2589

cc: Defense counsel (via ECF)